

## REMARKS

Upon entry of this amendment, claims 1, 3 and 62 are pending in the instant application. Claim 2 has been cancelled herein without prejudice or disclaimer, and Applicant reserves the right to prosecute that subject matter, as well as the originally presented claims, in continuing applications. No other claim amendments have been presented herein. Accordingly, no new matter has been added by this Response and Amendment.

### 1. Priority

The Examiner has maintained the objection to Applicants' claim for foreign priority based on European patent application No. EP98120085.0, filed on October 24, 1998.

Applicants apologize for the delay and will forward a certified copy of this application shortly.

### 2. Request for Information

The Examiner has indicated that Applicants are required under 37 C.F.R. §1.105 to provide information that the Examiner has determined is reasonably necessary to the examination of the instant application. In particular, the Examiner has required Applicant to provide information demonstrating the public availability of the human RFXANK protein sequence through NCBI's Entrez protein database.

The mouse and human RFXANK nucleotide and amino acid sequences referred to in the September 8, 2003 Declaration Under 37 C.F.R. §1.131 became publicly available in the GenBank database on November 2, 1998. Applicants attach hereto as Exhibit A an email from Monica Romiti at NCBI confirming that the mouse and human RFXANK sequences were released into the public database on November 2, 1998. Thus, the sequences recited by the pending claims were not publicly available prior to October 24, 1998, the earliest effective filing date of the instant application. Accordingly, Applicants believe that claims 1, 3 and 62 are in condition for allowance.

Applicants believe that this response fully satisfies the requirement for information under 37 C.F.R. §1.105. The Examiner is urged to call the undersigned if this understanding is incorrect.

**3. Claim Rejections Under 35 U.S.C. §112, first paragraph**

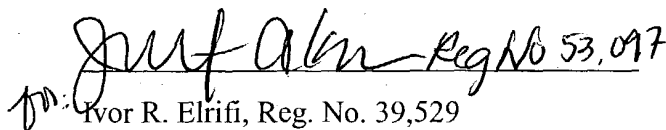
Claims 2 remains rejected under 35 U.S.C. §112, first paragraph for lack of enablement. Claim 2 has also been rejected under 35 U.S.C. § 112, first paragraph. According to the Examiner, the cell lines BLS1, Na and Ab are required to practice the claimed invention, and therefore, must be readily available to the public, obtainable by a repeatable method set forth in the specification or deposited under the terms of the Budapest Treaty.

Claim 2 has been cancelled herein, thereby rendering any rejections of this claim moot. Applicants request that the Examiner withdraw this rejection.

**CONCLUSION**

On the basis of the foregoing amendments, Applicants respectfully submit that the pending claims are in condition for allowance. If there are any questions regarding these amendments and remarks, the Examiner is encouraged to contact the undersigned at the telephone number provided below.

Respectfully submitted,

 Reg No 53,097

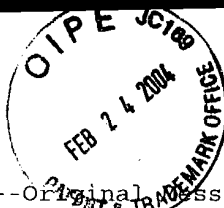
Ivor R. Elrifi, Reg. No. 39,529

Attorney for Applicant

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Fax (617) 542 2241

Customer No. 30623



RECEIVED

MAR 02 2004

-----Original Message-----

From: Monica Romiti [mailto:romiti@ncbi.nlm.nih.gov]  
Sent: vendredi, 20. février 2004 16:02  
To: kmasternak@novimmune.com  
Cc: romiti@ncbi.nlm.nih.gov  
Subject: group: AF094760. Homo sapiens RFXA...[gi:3820615]

Dear Colleague,

I have enclosed some information below regarding the release dates of AF094760 and AF094761.

AF094760 and AF094761 were both released into the GenBank database on November 2, 1998.

GenBank collaborates with the EMBL database in Europe and the DDBJ database in Japan to produce and distribute the International DNA Sequence Databases. The International DNA Sequence Databases take no responsibility for making any determination of the priority issues for patent claims. We are able only to inform you, to the best of our knowledge, of the release date of the pertinent sequence into the public database. We appreciate your understanding and cooperation.

Regards,

Monica L. Romiti  
GenBank User Services

----- Begin Forwarded Message -----

From: "Krzysztof Masternak" <kmasternak@novimmune.com>  
To: <info@ncbi.nlm.nih.gov>  
Subject: AF094760. Homo sapiens RFXA...[gi:3820615]  
Date: Thu, 19 Feb 2004 17:26:26 +0100  
MIME-Version: 1.0  
X-Priority: 3 (Normal)  
X-MSMail-Priority: Normal  
Importance: Normal  
X-MimeOLE: Produced By Microsoft MimeOLE V6.00.2800.1165  
X-Scanned-By: MIMEDefang 2.36

Hello,

I need to check the public realease date of the following sequence records:

"AF094760. Homo sapiens RFXA...[gi:3820615]" and "AF094761  
<<http://www.ncbi.nlm.nih.gov/entrez/viewer.fcgi?db=nucleotide&val=3820617>>

Mus musculus Rfxa...[gi:3820617]". I would be grateful if you checked the history of these records for me.

Thank you

Krzysztof Masternak

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Best regards,

Monica L. Romiti  
NCBI User Services